

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:12-CR-257 (16)

v.

HON. ROBERT HOLMES BELL

FREDERICK MAY,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Frederick May was sentenced on July 16, 2014, to a term of custody of 33 months following the granting of a variance request by the defendant. The 33-month sentence was below the original guideline range of 37 - 46 months.

Defendant May has filed a motion for modification or reduction of sentence (ECF No. 813) pursuant to 18 U.S.C. § 3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

The Probation Department filed a sentence modification report on July 17, 2015 (ECF No. 819). In its report, the probation department recommends a reduction in sentence to 27 months.

The defendant filed a response to the sentence modification report concurring with probation's recommendation. The government filed a response to the sentence modification report concurring that defendant is eligible for a reduction, however, argues that any sentence modification may be no less than the lowest end of the amended guideline range because the variance at the original sentencing was not the result of a government motion to reflect the defendant's substantial assistance.

Pursuant to the Sentence Modification Report, the defendant's amended guideline range is 30 - 37 months. The Court finds that although defendant received a variance at the time of sentencing, Application Note 3 of USSG § 1B1.10 states that a Court may not reduce the defendant's sentence below the new amended sentencing guideline range based upon variances or departures, unless the departure is based on a substantial assistance motion brought by the government.

NOW THEREFORE, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 813) pursuant to 18 U.S.C. § 3582(c)(2) is **GRANTED**. Defendant Frederick May's sentence shall be reduced to **30 months** imprisonment, effective November 1, 2015. An order effectuating the sentence reduction shall issue forthwith.

Dated: October 7, 2015

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE